IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6404 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S. INTER CONTINENTAL (INDIA)

Versus

UNION OF INDIA

Appearance:

MR KAMAL TRIVEDI,SENIOR ADVOCATE WITH MR RAKESH GUPTA AND MR UDAY JOSHI FOR M/S TRIVEDI & GUPTA for Petitioner No. 1

MR DN PATEL for Respondent No. 1

DS AFF.NOT FILED (R) for Respondents No. 2-3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/02/2002

CAV.JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The petitioners have challenged by way of this writ petition circular No.40/01-CUS dated 13/7/2001 (Exh."A") as being unconstitutional , illegal, ultravires (i) Articles 14, 19(1)(g) and (ii) the provisions of Section 151A of the Customs Act,1962 (hereinafter referred to as 'the Act'), and (iii) Notification No.17/01-CUS dated 1/3/2001 : interalia praying that the the impugned circular (Exh."A") and consequential order dated 20/7/2001 (Exh."R") be quashed and set aside. Further prayer has been made that the petitioners be assessed in relation to the goods covered by bill of entry dated 28/3/2000 (Exh."C") and in relation to consignment listed in Exh."H" at the concessional rate of 35% duty in terms of entry at Sr.No.29 of Table annexed to the Notification No.17/01 dated 1/3/2001 and furthermore, cancel the bonds executed by the petitioners and release the bank guarantees furnished at the time of provisional release of the goods in question.

2 Petitioner No.1 is a partnership firm while petitioner No.2 is a partner of petitioner No.1-Firm. The petitioners are engaged in business of trading in various commodities including Crude Palm Oil and Crude Palm Olein of Non-Edible Grade which is imported in accordance with law. Respondent No.1 is Union of India while Respondent No.2 is The Central Board of Excise and Customs, a statutory authority constituted under the Central Board of Revenue Act,1963. Respondent No.3 is the proper Officer having jurisdiction to assess the duty under the provisions of the Act.

3 On 1/3/2001 the Central Government issued an exemption Notification bearing No.17/01-CUS dated 1/3/2001 (hereinafter referred to as 'Notification No.17`)
in exercise of powers available under Section 25(1) of the Act. On 28/3/2001 the petitioners imported consignments of Crude Palm Oil (Non-edible Grade) and Crude Palmolein and filed Bills of Entry for home consumption wherein the said goods were classified under Chapter 15 of the First Schedule to the Customs Tariff Act,1975 (hereinafter referred to as the 'Tariff Act') as falling under sub-heading No.1511.10 and accordingly claimed exemption/benefit of being assessed at concessional rate of duty at 35% as provided under Entry at Sr.No.29 of Notification No.17. On 16/4/2001,

petitioner - firm informed respondent No.3 in writing that as the petitioner was only a trader and the Crude Palm Oil having been imported for trading purposes only, the petitioner was not concerned in any manner whatsoever with the end use of the said goods and even otherwise it was difficult for the petitioner-firm to establish the end use. However, on 28/3/2001, Respondent No.3 provisionally assessed the aforesaid imported goods under Entry No.34 of Notification No.17 at rate of 75% pending verification of the end-use on the ground that the petitioners were not able to establish the exact end-use of the produce and the benefit under Entry No.29 of Notification No.17 would be admissible only if the Oil was used as other than Edible Oil. Incidentally, though the order bears date of 28.3.2001 it appears to have been made after 16.4.2001, because petitioner's letter of 16.4.2001 has been considered before framing the order finally. Accordingly, by the said order provisional clearance was permitted on execution of Bond for differential duty and Bank Guarantee equivalent to 10% of the differential duty. It is pertinent to note that, in the meantime, the Boarding Officer collected samples of the goods in question and forwarded the same for the chemical examination. The Chemical Examiner, Kandla opined on 31/3/2001 that the said goods did not conform specification for Crude Palm Oil (Edible grade) as per IS-8323E-1977. Respondent No.3 had also forwarded one sample to the Superintendent, Referal Hospital and Community Health Center, Mundra, who in turn had forwarded the said samples for analysis to Food & Drug Laboratory, Vadodara and vide letter dated 11/5/2001 an opinion given by Public Analyst, Food & Drugs Laboratory, Vadodara was reproduced by Chief Medical Officer, wherein it was stated that except for acid value, the sample conforms to the standards and provisions laid down under the Prevention of the Food Adulteration Rules,1955 for Palm Oil and cannot be used as such for human consumption.

4 On 13/7/2001 circular No.40/2001-CUS was issued and the subject matter of the circular was clearance of vegetable oils imported for industrial purposes at concessional rate of duty under Notification No.17/2001. By the said circular it was incumbent upon the importer to satisfy the proper officer that actual use was for the industrial purpose only and only where such actual use was shown the importer would be entitled to benefit at the concessional rate of 35% under Notification No.17.

5. Learned Senior Counsel Shri Kamal Trivedi appearing with Shri Rakesh Gupta, Advocate, submitted that the impugned circular No.40/2001 was illegal, without jurisdiction and authority in as much as it sought to rewrite Notification No.17 by adding condition in relation to end-use even when Notification No.17 itself did not provide for any such condition. That by virtue of the impugned circular a condition precedent was being imposed on an importer before availing of concessional rate of duty in respect of imported goods resulting in unwarranted harassment of the petitioner. That Notification No.17 was subordinate legislation in relation to taxing statute and there was no room for supposed intendment while interpreting the said Notification. That, Entry at Sr.No.29 was clear in terms and the plain words used therein had to be considered without any external aid and if the legislature intended to insist for end-use in relation to imported Non -edible Oil for industrial purpose, Notification No.17 would have been so worded. In support of this proposition our attention was invited to various entries wherein column No.6 of the Table which prescribes conditions in respect of such entries wherein specific mention was made where end-use was necessary. It was further submitted that what was sought to be done should not be permitted as provision of Section 151A of the Act did not permit the Board or Central Government to issue circular which was contrary to Notification issued under Section 25 of the Act. That Notification was a piece of subordinate legislation while the circular was in the nature of an administrative order or instructions and could only be issued for the purpose of execution of the Act by prescribing the procedure etc. In support the following decisions were referred to and relied upon :

[1] Rakesh Enterprises and Another vs. Union of India and Another - 1986(25) E.L.T.906 (Bombay).

[2] Union of India vs. Rakesh Enterprises - 1991(56) E.L.T.39 (Bom.)

[3] Citric India Ltd. vs. Union of India - 1993(66) E.L.T.566 (Bom.).

[4] Union of India and Others vs. Tata Iron Steel Co.Ltd.,Jamshedpur - 1977 E.L.T.(J61).

[5] M/s.Hemraj Gordhandas vs. H.H.Dave, Assistant Collector of C.E. & Customs, Surat and others - 1978 E.L.T.(J 350).

[6] Bombay Oil Industries Ltd. vs. Collector of Central Excise, Cochin - 1997 (91) E.L.T.538(S.C.)

[7] Dunlop India Ltd. & Madras Rubber Factory Ltd. vs. Union of India and others - 1983 E.L.T.1566 (S.C.)

[8] Collector of Central Excise, Baroda vs. Vipul Shipyard - (1997) 10 S.C.C.337.

[9] Collector of Central Excise, Patna vs. Usha Martin Industries - 1997 (94) E.L.T.460 (S.C.)

[10] Paper Products Ltd. vs. Commissioner of Central Excise - 1999(112) E.L.T.765 (S.C.).

6. Mr.D.N.Patel, learned Standing Counsel for Revenue, appearing on behalf of the respondents contended that respondent No.3 had already passed a provisional assessment order and as the same was appealable this Court should not entertain the petition. A further contention was raised that the petitioner can avail of benefit of exemption Notification No.17 only lawfully and after fulfilling the prescribed condition and not just by misinterpreting the entries in the Notification. It was also submitted that Circular No.40/2001 was issued by the Central Board of Excise and Customs after examining the issue and in consultation with the Ministry of Food & Directorate of Vanaspati so as to ensure that benefit of concessional rate of duty for crude palm oil is available to actual users for industrial purposes and such actual use has to be shown to the satisfaction of the proper officer. That in the present case, though Crude Palm Oil imported by the petitioner was not conforming to the specifications of the provisions of Food Adulteration Act,1954, it could be subsequently refined to make it fit for human consumption and if concessional rate of duty under entry at Sr.No.29 of Notification No.17 would be allowed, Entry at Sr.No.34 would become redundant and defeat the intention of the Government of giving concessional duty for crude oil to be used for industrial purpose and not for edible purpose. Our attention was invited to the fact that the Notification is issued under Section 25(1) of the Act whereby the specified goods are declared exempt or exigible to concessional rate of duty and such goods are those falling within the Chapter, Heading No. or Sub-heading No. of the First Schedule to the Tariff Act. Section III, Chapter 15 of the Tariff Act classifies various goods like Animal Or Vegetable

Fats And Oils And Their Cleavage Products, etc. That classification heading numbers 15.07 to 15.15 only talk of various oils and their fractions, whether or not refined, but did not draw any distinction as to "Edible Oil" or "Non Edible Oil". The submission was that phrase "Non Edible Oil" was not used either in the classification or in the Notification and as could be seen from relevant entries, entry No. 29 talks of All goods (Other than Edible Oils) while Entry No.34 talks of Crude Palm Oil and its fractions of Edible Grade. Thus the submission went: that all types of oils could be made edible after carrying out certain processing and hence it was necessary to ensure that the end-use of the imported goods was only for industrial purpose and not as edible oil after processing. Contesting the submission on behalf of the petitioners that the proper officer was not required to take into consideration the end-use, reliance was placed on Supreme Court decision in case of Collector of Customs vs. Kumudam Publications (P) Ltd., 1997 (96) E.L.T. 226 (S.C.). It was contended that the Apex Court had specifically held that it may not be entirely correct to say that in no case the end-use or function of the goods is relevant on the question of classification. Our attention was also invited to HNS notes on the basis of which the present Notification and the classification of various oils are based. It was further submitted that the circulars issued by the Central Board of Excise and Customs were issued with the object of adopting a uniform practice by the department as to how a particular product will be treated for the purpose of levying duty. The learned Counsel also cited various decisions in support of the proposition that the burden is on the person who claims exemption to establish his case that he falls within the particular entry of the Notification. That the present circular No.40/01 merely laid down guideline or procedure to enable the assessee to discharge such burden.

7 In rejoinder, it was submitted on behalf of the petitioners that there was no dispute as regards the classification of the goods, the only dispute being applicability of the circular to the extent that the circular required establishing end-use when the same was practically not possible. It was further submitted that in taxing statute the proposition was well established that where two interpretations were possible, an interpretation which was more beneficial and which would leave the assessee with a lighter burden should be preferred. That in case of an item which might fall within two entries, the option was with the assessee to

claim benefit of an entry which would leave the assessee with a lighter burden of tax. The decision in case of Collector of Central Excise vs. Bakelite Hylam Ltd., 1997(91) E.L.T. 13 S.C, was relied upon in support of this proposition and lastly, it was submitted that the revenue's reference and reliance upon the earlier circular and Notification both of 1997, was misplaced in as much as the entries were different.

8 The charge of Customs duty is provided under Section 12 of the Act, which declares that duties of customs shall be levied on all goods imported into or exported from "India." The taxable event occurs moment the goods enter the territorial waters of India and the Act does not envisage different taxable events for different purposes. The right to recover duty flows from Section 12 of the Act. As provided in Section 12 of the Act dues of customs are to be levied at such rates as may be specified under the Tariff Act. The law is well settled as regards distinction between chargeability and assessment or quantification of the amount payable by way of customs duty. Section 12 of the Act is the only charging section but when it comes to assessment or quantification of the amount of the duty payable Sections 14 and 15 of the Act come into play. While Section 14

deals with valuation of goods for the purpose of assessment. Section 15 prescribes the date for determination of rate of duty and tariff valuation of imported goods.

9 Section 25 of the Act which deals with power to grant exemption from duty is reproduced hereunder :

25. Power to grant exemption from duty.-

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, for reasons to be

stated in such order, any goods, of strategic or secret nature, or for charitable purpose on which duty is leviable.

(3) An exemption under sub-section(1) or sub-section(2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation :'Form or method`, in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-section (1) shall -

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force".

10. Sub-section (1) of Section 25 of the Act specifically provides that Central Government may by public Notification in the Official Gazette, if it is necessary in the public interest, exempt generally either absolutely or subject to such condition in relation to specified goods either wholly or partly duty of customs. The condition which may be imposed in the Notification may be such as may require fulfillment before or after clearance. Sub-section (2) deals with passing of a special order. Sub-section (3) provides for levy of a duty on specified goods at a rate expressed in a form or method different from form or method in which the statutory duty is leviable. Notification issued under sub-section (1) shall come into force on the date of its issue by the Central Government for publication in the official gazette unless otherwise provided. This is provided in sub-section (4) of the Act. This publication in the official gazette assumes importance in light of provisions of Section 159 of the Act, whereby it is specifically provided that such Notification as may be issued under Section 25 of the Act shall be laid before each House of Parliament and the period for which it should be so laid and permitting modification by the House. The essential ingredient under the Section is that the Notification "shall be laid" before each House of Parliament. Hence, on a conjoint reading of Sections 25 and 159 of the Act it is clear that a Notification issued under Section 25 of the Act has the force of a statutory levy.

11. Section 151A of the Act provides for issuance of instructions to Officers of Customs. The section requires that if the Board considers it necessary or expedient to issue any orders, instructions and directions to officers of customs, it would be open to the Board to do so but the necessity or the expediency has to be for the purpose of uniformity in the classification of goods or with respect to the levy of duty on such goods. The said section further provides that all officers and other persons employed in execution of the Act shall observe and follow such orders, instructions and directions of the Board. The Act and The Tariff Act are a composite legislation - for effectuating one resort to the other is a must. The charging provision has to be read with the computation provisions as constituting an integrated code.

12 This is broadly the Scheme of the Act on the basis of which the present controversy shall have to be

resolved. There is no dispute between the parties as regards classification of goods. The question that falls for determination is , once the goods are classified and the taxable event has occurred, the rate of duty is fixed statutorily and some benefit of exemption is granted by way of Notification by exercising powers under Section 25(1) of the Act, is it possible to (i) postpone the taxable event, and/or (ii) to modify the levy by issuing circular in exercise of power under Section 151A of the Act.

13. As already seen, charge is leviable by operation of Section 12 of the Act and the said provision also prescribes taxable event. In the present case taxable event having occurred when the goods were imported by the petitioners, can the department then take a stand that though the taxable event has occurred collection of duty shall be made provisionally and final chargeability shall be ascertained upon happening or not happening of a contingency. In our opinion, this course of action cannot be permitted as the statute does not so provide. Once the import of goods is complete the charge is fastened and only the assessment or quantification remains to be done but such assessment or quantification cannot depend upon a contingency which may happen or which may not happen in future. This cannot be the intention of the legislature and the provisions of the Act coupled with the Tariff Act cannot be read in such a manner.

14 Section 25(1) of the Act permits the Central Government to notify specified goods to be exempt generally either absolutely or subject to such condition which may be fulfilled before or after clearance and the exemption may be in relation to whole or in part of the duty of customs leviable on the notified goods. Hence, the legislature was aware and conscience of the fact that it may be necessary in a given set of circumstances to lay down the conditions which shall be fulfilled by an importer even after clearance if the importer wanted to claim benefit of exemption from duty of customs under a particular notification and such condition shall have to form part of the notification. In other words Section 25(1) of the Act provides for complete machinery which would enable the importer to know before importing and before claiming exemption as to what are the conditions on fulfillment of which he was to become entitled to seek exemption under such a notification. The stand adopted by the revenue does not fit in with the scheme of the Act.

15 As can be seen from Notification No.17, the Government was conscious of the provision of Section 25(1) of the Act and has specifically prescribed condition in relation to some entries in column No.6 of the Table. It is not necessary for us to refer to various conditions specified in the Annexure to the Notification but by way of illustration entry at Sr.No.43 will be sufficient to show how provisions of Section 25(1) of the Act operate. In column 6 pertaining to conditions, condition No.6 has been prescribed for entry No.43, which deals with " wine, for use as sacramental wine" and the rate of concessional duty is 35%. Condition No.6 in the annexure reads; " if the importer furnishes undertaking to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the wine shall be used as sacramental wine". Therefore, a condition pertaining to a stage after clearance has been imposed as provided in the section. Similarly, condition Nos. 12, 17, 18 and 40 are the instances of situations where end-use is stipulated as being pre-requisite for claiming exemption as part of the Notification No.17. In fact, in condition No.40, a period of two years is available from the date of importation or within such extended period as the officer may allow, in which the importer is required to produce necessary certificate.

16 In relation to entry at Sr.No.29, no condition is prescribed. Similarly no condition is prescribed in relation to entry at Sr.No.34 or even in entry No.28. If the Notification No.17 has not provided for any condition, in our opinion, subsequent circular cannot impose such a condition as the same would tantamount to rewriting Notification No.17 or in other words legislating by circular, which is not permissible in law. As can be seen from the relevant provisions with special reference to Section 25 read with section 159 of the Act, a notification under section 25 of the Act requires publication in the official gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in the Notification No.17 it would not be permissible to permit revenue to impose such condition by way of circular. If the revenue is allowed to undertake such an exercise, the requirement of publication in official gazette and laying a notification before each House of the Parliament would become nugatory and such a course of action is not envisaged by the Act. It would

give licence to the executive to bypass/override the legislature and cannot be countenanced.

17 Lot of debate took place in relation to the actual wordings and the meaning of entries 28, 29 and 34 of Notification No.17. The said entries read as under:

S. No.	Chapter or Heading No. or sub-heading No.	Description of Goods	Standard rate	Addi-tioal duty rate	Condi-tion No.
28.	15	Edible oils falling under heading No. 15.08, 15.11, 15.12, 15.13,15.14 or 15.15	85%	-	-
29.	15	All goods (other than edible oils falling under heading No.15.07, 15.08, 15,09, 15.10, 15.11, 15.12, 15.13, 15.14 or 15.15	35%	-	-
		x x x x x x			
34.	1511.10	Crude palm oil and its fractions, of edible grade, in loose or bulk form	75%	-	-

18 As can be seen from the entries, entry no.28 deals with Edible oils falling under heading viz. Ground-nut Oil, Palm Oil, Sunflower seed, Safflower or cotton seed oil, Coconut oil and others as mentioned in 15.13, Rape, colza or mustard oil and other fixed vegetable fats and oils. On the other hand, entry No.29 talks of All goods (other than Edible oil) falling under various heads mentioned in entry No.28 as well as headings dealing with Soya-bean oil, Olive oil and other oils obtained solely from olives. If we compare entry No.34 dealing with crude palm oil and its fraction of Edible grade in loose or bulk form and column No.2 of the Table which shows sub-heading 1511.10 it can be observed that the said sub-heading 1511.10 is absent in entries 28

& 29. In view of this situation it is apparent that entry No.34 carves out an exception to Entry No.28 and has no relevance with Entry No.29. Entry No.28 deals with Edible oils falling under various headings and sub-headings and one of the headings is 15.11 which deals with Palm oil and its fractions whether or not refined but not chemically modified, while sub-heading 1511.10 deals with Crude oil i.e. Crude palm oil. When one reads entries 28 and 34 in juxta position, it is apparent that entry No.28 pertains only to edible oils falling under specified sub-headings and entry No.34 is an exception carved out from that entry as regards Crude palm oil of edible grade. In relation to entry No. 29, it pertains to All goods other than edible oils i.e. goods envisaged by entry No.29 are those which do not fall either in entry No.28 or in entry No.34. If that be so, we have no doubt and that is the position, it is not possible to accept the contention of revenue that goods falling under entry No.29 should not be made liable to concessional rate of duty i.e. 35% but should be treated as falling under entry No.34, if the importer fails to establish that though the goods are other than edible oils at the time of import, yet importer should establish that they shall not be refined or processed to make them of edible grade, in other words, the importer should establish end use to the satisfaction of the proper officer. There is one more reason why this course of action proposed by the revenue cannot be accepted. As can be seen from comparison of entry No.29 and entry No.34, though there are various types of oils mentioned in entry No.29 only Crude palm oil of edible grade is brought under entry No.34 and the circular is only in relation to the said item viz. Crude palm oil. Thus, in effect All goods (other than edible oils) falling under different headings except 15.11 can be imported without any such condition of end-use being imposed upon an importer. Only in relation to heading No.15.11 relating to Palm oil, the condition is being imposed upon an importer to establish the end-use for claiming benefit of concessional rate of duty under the Notification No.17. There is no logic, no rationale, much less any basis for such a treatment to only one category of oil which otherwise falls under the same classification under the Tariff Act.

19. Mr.Patel during the course of discussion referred to the provisions of Prevention of Food Adulteration Act,1954 as well as Rules thereunder with special reference to Section 6 of the said Act and Rule 5 which defines standards of quality on various articles as

specified in Appendix "B" to the Rules. Our attention was invited to various standards set out in Appendix "B" to urge that only slight difference was there between the different kinds of Oils for the purpose of ascertaining whether oil was of edible grade or not. It is not necessary for our purpose to deal with the various technical aspects laid down in Appendix "B" for the simple reason that it is an admitted position between the parties that when the imported goods entered territorial waters of India, the Boarding Officer had drawn samples of the product for test in the presence of the representative of the Master of Vessel, the Shipping Agent and representative of the Importer; and such samples had been sent for testing to the Chemical Examiner, Customs House, Kandla, who has opined that the same does not conform specification for Crude Palm oil (Edible grade) as per IS-8323-E-1977. It appears that the said sample was also forwarded through the Referal Hospital & Community Health Centre, Mundra-Kutch, to the Public Analyst, Food & Drug Laboratory, Vadodara for opinion. He has opined to the effect that the sample conforms to the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955, for Palm Oil and cannot be used as such for human consumption. Therefore, once the competent authority who is technically qualified to tender opinion in relation to the technical standards prescribed under the provisions of Food Adulteration Act and Rules thereunder has tendered his opinion it would not be open to any one to take a contrary stand, unless and until such technical opinion is displaced by specific and cogent evidence in the form of another technical opinion. Merely by approaching the matter by stating that the goods could be converted into Palm oil of edible grade by carrying out certain processes, the Respondent No.3 who is an officer of the department cannot displace the report of technical expert, nor can he insist that inspite of such report the importer must establish that end-use of the product shall not be other than one as regards entry in which the goods admittedly fall at the time of import.

20. The impugned circular No.40/01 in paragraph 6(c) requires that the end-use certificate shall have to be produced by the importer from the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factories of soap manufacturers (or other industrial application for which the vegetable oil is claimed to have been used) and such certificate is produced before the customs authority within a period of three months or a period as may be extended by the Commissioner of

Customs on being requested by the importer. It is further stated in the said sub-paragraph that on failure of importer to produce such certificate within a specified time frame immediate recovery action of differential amount be initiated. The earlier paragraph i.e.sub-paragraph (b) of paragraph 6 of the circular states that even after the report of testing of vegetable oil and finding that the consignment is not conforming to the standards prescribed under the PFA Act and Rules thereunder, the provisional assessment may be made at the concessional rate of duty and the goods may be permitted to be moved on execution of bond for establishing end-use of the oil for industrial use as claimed and the bond shall cover the differential duty liability between the industrial and edible grade oil. Further more, depending upon whether the import is by an actual user manufacturer or trader security/bank guarantee amounting to 25% or 100%, as the case may be, of the bond value shall be taken. Mr.Patel, learned Counsel appearing on behalf of the respondents submitted in relation to this part of the circular that these safeguards have been prescribed so as to uniformly assess persons importing oils for industrial use only and to prevent misuse of imported oils being used for edible purpose after processing, on payment of concessional rate of duty. According to him, in case of a trader, if the goods are sold to 'A' and further 'A' sells those goods to 'B', 'B' to 'C', 'C'to 'D' and so on, the importer trader shall have to produce the end-use certificate from the last such purchaser in the chain and the certificate shall have to be from the Assistant/Deputy Commissioner of Central Excise having jurisdiction over last such purchaser. It is beyond our comprehension as to how can a trader be expected to follow the goods which he has already sold off and which might change hands in series of transactions. To expect such an importer trader to produce a certificate of end-use from an officer of Central Excise, having jurisdiction over the purchaser who is the last in the chain of transaction is casting a burden which if not impossible is impracticable to say the least. At least such a requirement/condition cannot be read in Notification No.17 by virtue of the impugned Circular No.40/2001.

21. The position in law is well settled. It is not permissible to read some additional words in a notification, much less any condition where none have been prescribed. The entire matter is governed wholly by language of the notification and in a case where the plain term of the exemption show that the tax payer falls

within the same, benefit cannot be denied by relying upon supposed intention of the exempting authority. Furthermore, it is well established that in a taxing statute the meaning of a particular word as accepted by the trade and its popular meaning should be preferred and should commend to the authority because it is the condition of the article at the time of importing which is material for the purpose of classification as to under what head duty will be leviable and whether it would be exempt wholly or partly. In the case of Collector of Central Excise vs. Vipul Shipyard, (1997) 10 S.C.C.337 various notifications have been dealt with which grant exemption from excise duty to "Ocean-going vessels". The revenue had contended that end-use of the vessel was relevant and if the vessels were used within inland waters as barges they were liable to levy of duty. The Apex Court held that at the point of time when the vessels were built the liability to excise duty arose, and at that time vessels were "ocean-going vessels" and that subsequently if they were used in inland waters is of no consequence.

22. It is well established in law that the circulars issued by the Board may bind the officers of the department yet the position would be different with regard to an assessee who is always entitled to contest the validity or legality of such instructions.

23. We, therefore, hold that the impugned circular No.40/2001 Cus dated 13.7.2001, Exhibit "A" is contrary to Notification No.17/2001-Cus dated 1/3/2001 and cannot override the said notification. As a consequence the impugned Circular No.40/2001 - Cus- dated 13/7/2001, Exhibit "A" as well as impugned order dated 20/7/2001, Exhibit "R" are quashed and set aside. The respondents are directed to forthwith assess the goods covered by bill entry dated 28/3/2000, Exhibit "C" and goods covered by consignments listed in Exhibit "H" in terms of entry No.29 of Table annexed to the Notification No.17/2001 dated 1/3/2001 and further cancel the bonds executed by the petitioners and release the bank guarantees furnished by the petitioners at the time of provisional release of the said goods.

24. In the result, the petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.M.Dharmadhikari, C.J.)
Sd/-
(D.A.Mehta, J)

25. At this stage, Mr.D.N.Patel for the Department requests that the operation of the judgment may be stayed for a period of three weeks. It is not possible to accept the said request.

Sd/-
(D.M.Dharmadhikari, C.J.)
Sd/-
(D.A.Mehta, J)

m.m.bhatt